Kee Chai Heng v Ketua Polis Daerah Kuala Muda & Anor

HIGH COURT (ALOR SETAR) — CIVIL APPEAL NO 12–27 OF 1998
MOHD HISHAMUDIN J
6 FEBRUARY 1999

Civil Procedure *— Transfer of action — From sessions court to magistrate's court — Whether sessions court has power to transfer civil case filed before it to magistrate's court — Subordinate Courts Act 1948 Schedule 3, para 3(2)*

The plaintiff had filed an action against the defendants for negligence in the sessions court. At the commencement of the hearing, the sessions court judge ordered the case to be transferred to the magistrate's court after giving the parties the opportunity to submit on this course of action. Dissatisfied with the order, the plaintiff appealed, contending that the total value of damages claimed would exceed RM25,000 and hence, by virtue of s 90 of the Subordinate Courts Act 1948, the claim was outside the jurisdiction of the magistrate's court.

Held, allowing the appeal, with costs to the plaintiff:
In civil cases, a sessions court does not have the power to transfer any case filed before it to the magistrate's court. Under para 3(2) of the Third Schedule of the Subordinate Courts Act 1948, the sessions court only has power to transfer a case that is before it to another court of co-ordinate jurisdiction, ie another sessions court (see p 670C–F).

Obiter:

Where it is clear from the nature of the claim that the action should have been filed before the magistrate's court, the sessions court should stay further proceedings pending an application by one of the parties to the High Court for the case to be transferred to the magistrate's court. The order to transfer should only be made by the sessions court once the High Court has made an order that the case be transferred to the magistrate's court (see pp 670I–671B).

[Bahasa Malaysia summary

Plaintif telah memfailkan di dalam mahkamah sesyen tindakan terhadap defendan untuk kecuaian. Pada permulaan pendengaran perbicaraan, hakim mahkamah sesyen telah mengarahkan kes tersebut untuk dipindah ke mahkamah majistret selepas memberikan pihak-pihak peluang untuk berhujah mengenai tindakan ini. Oleh kerana tidak puas hati dengan perintah tersebut, plaintif telah merayu, menegaskan bahawa nilai ganti rugi keseluruhan yang dituntut akan melebihi RM25,000 dan oleh itu, menurut s 90 Akta Mahkamah

A Rendah 1948, tuntutan tersebut adalah di luar bidang kuasa mahkamah majistret.

Diputuskan, membenarkan rayuan, dengan kos kepada plaintif:

Dalam kes sivil, mahkamah sesyen tidak mempunyai kuasa untuk
B memindah sebarang kes yang difailkan di hadapannya kepada mahkamah majistret. Menurut perenggan 3(2) Jadual Ketiga Akta Mahkamah Rendah 1948, mahkamah sesyen hanya mempunyai kuasa untuk memindahkan kes di hadapannya ke mahkamah yang lain yang mempunyai bidang kuasa yang sama, iaitu ke mahkamah sesyen yang lain (lihat ms 670C–F).

C

Obiter:

Apabila adalah jelas bahawa daripada bentuk tuntutan tersebut bahawa tindakan tersebut sepatutnya difailkan di hadapan mahkamah majistret, mahkamah sesyen sepatutnya menggantungkan prosiding
D selanjutnya sementara menunggu permohonan oleh salah satu pihak ke Mahkamah Tinggi agar kes ini dipindah ke mahkamah majistret. Perintah untuk memindah hanya boleh dibuat oleh mahkamah sesyen selepas Mahkamah Tinggi telah membuat perintah bahawa kes tersebut di pindah ke mahkamah majistret (lihat ms 670I–671B).]

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Notes

For cases on transfer of action, see 2(2) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 4887–4894.

F

Legislation referred to

Subordinate Courts Act 1948 ss 65, 90, 104, Schedule 3, para 3(2)
Courts of Judicature Act 1964 Schedule, para 12
Subordinate Courts Rules 1980 O 47

G *Jagdeep Singh Deo* (*Karpal Singh & Co*) for the appellant/plaintiff.
Badlishah bin Ahmad (Federal Counsel) for the respondents/defendants.

Mohd Hishamudin J: This is an appeal against the decision of the learned sessions court judge in Sungai Petani given on 23 March 1998.

Before the sessions court, the appellant was the plaintiff, whilst the
H respondents were the defendants.

The plaintiff is a truck driver. It is alleged in the statement of claim that on 11 October 1995 three police officers came to his house and arrested him. It is further alleged that while in police custody, he was assaulted by the three police personnel. He suffered injuries.

I The plaintiff filed an action against the defendants for negligence for failing to ensure that he was not harmed whilst under police custody.

In the civil suit before the sessions court the plaintiff claimed for special damages, general damages and exemplary damages. A

At the lower court, at the commencement of the hearing, the learned sessions court judge, on his own initiative, informed the parties that he was of the opinion that the claim was within the jurisdiction of the magistrate's court and that he had in mind to transfer the case to that court. After giving the parties the opportunity to submit on his intended course of action, he ordered that the case be transferred to the magistrate's court. B

Dissatisfied with that order, the plaintiff now appeals.

Before the learned sessions court judge, the plaintiff had argued that the total value of damages claimed exceeded RM25,000 and, hence, by virtue of s 90 of the Subordinate Courts Act 1948 ('the SCA'), the claim was outside the jurisdiction of the magistrate's court. C

In my judgment, as far as civil cases are concerned, a sessions court does not have the power to transfer any case filed before it to the magistrate's court even if the sessions court judge is of the opinion that the claim of the plaintiff does not exceed RM25,000. The law governing the powers of sessions courts and magistrate's courts to transfer cases is provided by para 3(2) of the Third Schedule (which provides for the additional powers of sessions courts and magistrates' courts) of the SCA. It reads: D

> 3 (1) (Repealed) E
>
> (2) Power, on application or of its own motion, to transfer any proceedings to another court of *co-ordinate* jurisdiction. (Emphasis added.)

It is clear from the above provision that the sessions court has the power to transfer a case that is before it only to another court of co-ordinate jurisdiction, that is to say, only to another sessions court, not a magistrate's court. In relation to the sessions court, a magistrate's court is not a court of co-ordinate jurisdiction. A sessions court is a court of higher jurisdiction. A sessions court has jurisdiction to hear any claim not exceeding RM25,000 (see s 65 of the SCA). F

Only the High Court has the power to transfer a civil case from a sessions court to a magistrate's court and vice versa. This is provided by para 12 of the Schedule (providing for additional powers of the High Court) to the Courts of Judicature Act 1964 ('the CJA'), which provides: G

> Transfer of proceedings H
>
> Power to transfer any proceedings to any other Court or to or from any subordinate court, and in the case of transfer to or from a subordinate court to give any directions as to the further conduct thereof:
>
> Provided that this power shall be exercised in such manner as may be prescribed by any rules of court.

In any civil case before a sessions court, where it is very clear from the nature of the claim that the action should have been filed before the I

magistrate's court (say, an action to recover a debt of RM1,000), the sessions court should not transfer the case to the magistrate's court. As I have just pointed out, it has no power to do so. The sessions court should stay further proceeding pending an application by one of the parties to the High Court (under normal circumstances, one of the parties is likely to make such an application) for the case to be transferred to the magistrate's court. The order to transfer should only be made by the sessions court once the High Court has made an order that the case be transferred to the magistrate's court.

I presume that in some cases the plaintiff, upon realizing his mistake in filing his case before the sessions court, would prefer to withdraw the case with liberty to file afresh before the magistrate's court rather than making an application to the High Court for the transfer of the case to the magistrate's court.

What I have just said above concerns a clear cut situation. It might be that in many cases the situation is not one that is clear-cut (such cases might be common among claims involving unliquidated damages). In such cases, in order to avoid unnecessary delay and costs, it is, to my mind, prudent or the sessions court not to entertain the uncertainty and embark on an exercise — more so on its own motion — of determining, before the trial even begins, whether the total sum of the damages likely to be recovered by the plaintiff would be less than or exceed RM25,000. The sessions court should proceed with the trial of the case before it. After all, the sessions court is competent to hear such cases: as a general rule, what is within the civil jurisdiction of the magistrate's court is also within the jurisdiction of the sessions court. Moreover, in many such cases, the extent of the damages that should be awarded could only be determined with certainty after having the benefit of hearing the whole evidence and submissions.

In the present case, which involves a claim for both liquidated and unliquidated damages (perhaps there is justification to regard this case as being under the category of non clear cut cases), based on the case law precedent submitted before me by the learned counsel for the appellant, I am satisfied that there is a reasonable basis for the plaintiff to take the view that the total value of his claim is likely to exceed RM25,000. Needless to say, as the trial has not begun and evidence has yet to be adduced, this opinion of mine as to the total value is merely a tentative one.

I would like to reiterate here that this judgment only concerns civil cases before sessions courts. I am not concerned in this judgment with criminal cases. As far as criminal cases are concerned, there are other considerations to take into account, for example, s 104 of the SCA.

I am, however, aware of O 47 (transfer of proceedings) of the Subordinate Courts Rules 1980 ('the SCR'). In my view, this order must be read subject to para 3(2) of the Third Schedule to the SCA. The SCR is merely a subsidiary legislation, whereas the SCA is an Act of Parliament. If so read, then O 47 must be interpreted to provide for the transfer of proceeding from a subordinate court to another subordinate court of

co-ordinate jurisdiction, that is to say, from a sessions court to another sessions court or from a magistrate's court to another magistrate's court.

Accordingly, I allow the appeal with costs. The Sessions Court Sungai Petani is to proceed to hear the case.

Appeal allowed with costs.

Reported by Joel Ng